

Hon. Christopher M. Alston
Chapter 7
Hearing Date: June 18, 2021
Hearing Time: 9:30 a.m.
Hearing Site: Telephonic
Response Date: June 11, 2021

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE:

SAMIA EL-MOSLIMANY,

Debtor.

Chapter 7

No. 18-14820-CMA

CREDITOR HAYAT SINDI'S OBJECTION
TO TRUSTEE'S MOTION TO APPROVE
COMPROMISE AND SETTLEMENT OF
ADVERSARY PROCEEDING 19-2-0116
CAPTIONED AS BROWN V. AL-YOUSEF

COMES NOW creditor Hayat Sindi ("**Creditor**" or "**Dr. Sindi**"), by and through undersigned counsel, and hereby objects to: 1) Trustee's Motion to Approve Compromise and Settlement of Adversary Proceeding 19-0116 Captioned as Brown v. Al-Yousef filed by Ronald G. Brown, the Chapter 7 Trustee in Case No. 18-14820-CMA (the "**Brown Motion**"); and 2) Trustee's Motion for an Order Approving Compromise of Claim filed by Nancy L. James, the Chapter 7 Trustee in Case No. 20-13149-CMA (the "**James Motion**" and together with the Brown Motion, the "**Motions**").

HAYAT SINDI'S OBJECTION TO MOTIONS TO APPROVE
COMPROMISE AND SETTLEMENT - 1

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1 **I. STATEMENT OF FACTS**

2 The issues currently before the Court are grounded in a campaign of abuse that was
3 launched against Dr. Sindi by Samia El-Moslimany (“**Samia**”) and her mother, Ann El-
4 Moslimany (“**Ann**” and together with Samia, the “**El-Moslimanys**”). Simply put, the El-
5 Moslimanys came to believe that Dr. Sindi had an affair with Samia’s husband, and responded
6 with a vendetta intended to destroy Dr. Sindi personally and professionally. This reign of terror
7 featured false, defamatory, and malicious attacks on Dr. Sindi’s academic credentials,
8 professional qualifications, and even her age. *See generally* Wisen Declaration, Exh. A (First
9 Circuit Opinion).

10
11 On January 25, 2013, Dr. Sindi sued the El-Moslimanys in Massachusetts, and the case
12 went to trial over three years later, on July 11, 2016. *Id.* at 4. “In the course of its jury
13 instructions, the court encouraged the jurors to consult a nine-page document (referred to as a
14 “chalk”), which listed approximately 132 allegedly defamatory statements attributed to Samia
15 and/or Ann.” *Id.* at 4-5. “The jury returned a general verdict in Dr. Sindi’s favor on all but
16 one of the submitted claims.” *Id.* at 5. “It found Samia liable for intentional infliction of
17 emotional distress; absolved Ann of that charge; and found both Samia and Ann liable for
18 defamation, tortious interference with contract, and tortious interference with advantageous
19 relations. The jury awarded damages totaling \$3,500,000.” *Id.* The district court
20 subsequently granted Dr. Sindi’s motion for a permanent injunction, and “enjoined the El-
21 Moslimanys from publishing ‘orally, in writing, through direct electronic communications, or
22 by directing others to websites or blogs reprinting’ six statements that the district court
23 concluded were defamatory.” *Id.* at 5-6. The district court also somewhat reduced the damages

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1 that had been awarded by the jury. *Id.* at 6.

2 The El-Moslimanys appealed to the First Circuit Court of Appeals. The First Circuit
3 affirmed the jury's findings of liability on most of Dr. Sindi's tort claims, including the
4 defamation claim, and affirmed the corresponding money judgments. *Id.* at 63. However, the
5 tortious interference with advantageous relations claim was reversed, and the injunction was
6 vacated. *Id.*

7
8 The record is replete with evidence that the El-Moslimanys acted with malice toward
9 Dr. Sindi, an approach that has not changed in these bankruptcy proceedings. The First Circuit
10 explained that Samia El-Moslimany had conducted a "more than four-year long war of
11 vituperation ... against Dr. Sindi," *id.* at 29, and the record is otherwise filled with proof of the
12 El-Moslimanys willful intent to harm Dr. Sindi. As the First Circuit observed, "the jury could
13 supportably have concluded that Samia displayed a strain of *deliberate malevolence* that
14 easily qualified as extreme and outrageous conduct." *Id.* at 28-29 (emphasis added). It also
15 concluded that "the record supports the jury's determination that Dr. Sindi's emotional distress
16 was the foreseeable result of Samia's years-long pattern of vilification..." *Id.* at 32.

17
18 On February 27, 2017, while the appeal was pending, Dr. Sindi recorded a Notice of
19 Judgment Lien Against Homestead Property. Wisen Decl., Exh. B. Then, after the First
20 Circuit issued its ruling on July 11, 2018, the district court entered its Second Amended Final
21 Judgment. Wisen Decl., Exh. C. Dr. Sindi subsequently registered the Second Amended Final
22 Judgment in King County Superior Court, and on September 25, 2018, recorded the resulting
23 Foreign Judgment in the King County Real Property Records under Assessor's Number
24 20180925000965. Wisen Decl., Exh. D.

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1 On December 20, 2018, Samia El-Moslimany filed for bankruptcy, which is pending
2 under Case No. 18-14820-CMA. The judgment in favor of Dr. Sindi is scheduled in the
3 amount of \$1,548,500.00. Based on the willful and malicious conduct summarized above, Dr.
4 Sindi filed a non-discharge complaint against Samia El-Moslimany, which is pending under
5 Adv. Proc. No. 19-01034. The Court denied Dr. Sindi's motion for summary judgment, and
6 the adversary case is set for trial on August 10-12.
7

8 On December 20, 2020, Ann El-Moslimany filed for bankruptcy, which is pending
9 under Case No. 20-13149-CMA. Ann El-Moslimany subsequently passed away. Dr. Sindi has
10 filed a Proof of Claim in Ann El-Moslimany's bankruptcy in the amount of \$354,575.72.
11 Based on the willful and malicious conduct described above, Dr. Sindi filed a non-discharge
12 complaint against Ann El-Moslimany and her estate. No answer has been filed.
13

14 The most significant asset identified by Ann and Samia El-Moslimany in their
15 bankruptcy schedules is a jointly-owned residence in Burien, Washington (the "**Property**"),
16 which has an estimated market value of \$1.3 Million (or perhaps significantly more, as
17 discussed *infra*). See Wisen Decl., Exh. E (Declaration of Rik Jones, ¶ 5). There is a first
18 position deed of trust in favor of Washington Federal with a balance due of approximately
19 \$410,000. See Wisen Decl., Exh. F (Notice of Hearing on Trustee's Motion to: 1) Approve
20 Compromise and Settlement; 2) Authorizing Listing of Property for Sale; 3) to Employ Realtor;
21 or Alternatively, 4) to Compel Turnover of Property of the Estate ("**Trustee's Motion to List**
22 **Property**")). Samia and Ann El-Moslimany also each claim a homestead exemption of
23 \$125,000 against the property. *Id.*
24

25 Samia and Ann El-Moslimany also scheduled a deed of trust in favor of an individual

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1 named Aziza Al-Youssef; however, this lien (scheduled by Samia El-Moslimany in the amount
2 of \$500,000)¹ is believed to be fraudulent and invalid, as described in the pleadings of record in
3 the Al-Youssef Adversary. *See* Adv. Pro. No. 19-01116-CMA, Dkt. No. 1 (Complaint).

4 If the Al-Youssef lien is avoided, Dr. Sindi, who is far and away the most significant
5 creditor of both estates,² would recover the lion's share of the proceeds of a sale of the Property
6 after closing costs, administrative expenses, and legal fees incurred by the trustees. Critically,
7 even setting aside the Al-Youssef lien, the Trustees recently concluded that there was equity in
8 the Property. *See, e.g.,* Wisen Decl., Exh. F (Trustee's Motion to List Property, Pg. 3) ("after
9 payment of the costs of sale and the secured debt, setting aside the funds for the disputed debt
10 and the two homestead exemptions, there will remain between \$78,000 and \$90,000 in
11 proceeds to which the Sindi lien can attach").

12
13 In order to unlock this value, the Trustees and Dr. Sindi agreed to enter into an
14 "Agreement to Market Real Property," made effective April 30, 2021 (the "**Property**
15 **Agreement**"). Wisen Decl., Exh. G. The Property Agreement was made subject to Court
16 approval, and the Trustees accordingly filed companion motions on April 9, 2021 seeking
17 approval of the Property Agreement with Dr. Sindi, and other relief intended to result in a sale
18 of the Property. *See, e.g.,* Wisen Decl., Exh. F (Trustee's Motion to List Property; Case 20-
19 13149-CMA Dkt. Nos. 43-48; Case 18-14820-CMA Dkt. Nos. 148-151. The Property
20 Agreement provided, among other things, that the Trustees "*shall* employ a real estate agent to
21
22

23
24 ¹ *See* Samia El-Moslimany's Schedule D (Dkt. No. 10, pg. 13). The Trustees pleadings note that Ann El-
Moslimany scheduled the amount as \$547,537, but that the Trustees believe that the balance owed is
approximately \$446,000. *See* James Motion, pg. 1-2.

25 ² *See, e.g.,* James Motion at 3 (indicating Dr. Sindi is the "only significant creditor" in the case, and "will receive
over 98% of the funds disbursed.").

1 market the Property” (¶ 3) (emphasis added), and described the anticipated allocation of sale
2 proceeds. *Id.* at ¶ 4. The Property Agreement further provides that each party “agrees to take
3 any and all action necessary where appropriate to execute and discharge its responsibilities and
4 obligations created pursuant to ... this Agreement.” *Id.* at ¶ 14.

5
6 Despite the existence of the Property Agreement with Dr. Sindi, the Trustees
7 subsequently entered into a settlement with Samia El-Moslimany (on her own behalf, and as
8 personal representative of Ann El-Moslimany’s probate estate) and Aziza Alyousef that is the
9 subject of the instant Motions. The two settlements cannot be reconciled, and so the Trustees
10 are effectively asking the Court to allow them to undo their agreement with Dr. Sindi in order
11 to pursue an option which they claim is more favorable to the estates.

12 II. LEGAL AUTHORITY AND ARGUMENT

13
14 The Trustee’s proposed settlement with Ms. El-Moslimany should be denied under
15 *A&C Properties*, 784 F.2d 1377 (9th Cir. 1986), cited in the Trustees’ Motion at Pg. 5. As a
16 threshold matter, *A&C* counsels that “there must be more than a mere good faith negotiation of
17 a settlement by the trustee in order for the bankruptcy court to affirm a compromise agreement.
18 The court must also find that the compromise is fair and equitable.” *Id.* at 1381 (*citing*
19 *Citibank, N.A. v. Baer*, 651 F.2d 1341, 1345-46 (10th Cir. 1980). Moreover, “[t]he trustee, as
20 the party proposing the compromise, has the burden of persuading the bankruptcy court that the
21 compromise is fair and equitable and should be approved.” *Id.* (*citing In re Hallet*, 33 Bankr.
22 564, 565-66 (Bankr. D. Me. 1983). Here, the Trustees have not met their burden to show that
23 the proposed settlement is “fair and equitable.” To the contrary, it appears that the only real
24 value to settlement with Ms. El-Moslimany and Ms. Alyousef is that it would be more
25

1 expedient. It would not, however, be a fair and equitable result in light of the fact that there is a
2 better option: approval of the earlier settlement with Dr. Sindi, a path that is likely to result in a
3 far better recovery for the creditors.³

4 As discussed in the Trustee's Motions, the Court is to evaluate four factors in
5 determining whether to approve a compromise or settlement. *See also id.* Here, only **one** of the
6 factors likely weighs in favor of approving the settlement, while the other three weigh strongly
7 against approval.
8

9 **A. Probability of Success in Litigation.**

10 The pleadings filed by Trustee Brown in the Alyousef Adversary lay out the fraudulent
11 nature of the Alyousef lien in exquisite detail. *See e.g.* Dkt. No. 1 (Complaint). Dr. Sindi has
12 also separately objected to the alleged Al-Yousef lien. *See* Dkt. No. 17 (Case No. 18-14820-
13 CMA); Dkt. No. 34 (Case No. 20-13149-CMA). Critically, Trustee Brown acknowledges that
14 he has a "75% chance of proving that the transfers to Al-Yousef were actually and/or
15 constructively fraudulent." Brown Motion, pg. 5; Brown Decl., ¶ 14. Accordingly, the
16 Trustees have a strong probability of success in the Al-Yousef adversary, and this factor
17 weights against approving the settlement.
18

19 **B. Difficulties to be Encountered in the Matter of Collection.**

20 The Trustees acknowledge that "there is substantial equity in the Property" and
21 therefore "*does not believe there would be much difficulty collecting on the judgment.*" *Id.*
22
23
24

25 ³ Dr. Sindi also objects to the Motion to the extent that the source of the \$300,000 is not disclosed prior to the
26 hearing.

1 (emphasis added). Again, because there would not “be much difficulty collecting on the
2 judgment,” this factor cuts against the proposed settlement.

3 The Brown Motion goes on to suggest that there might be “difficulties in getting the
4 Debtor and her family to leave the Property and the assistance of the U.S. Marshal might be
5 required.” *Id.* In essence, the Trustees suggest that Ms. El-Moslimany might refuse to follow
6 this Court’s orders regarding the disposition of the Property. Dr. Sindi would like to give Ms.
7 El-Moslimany the benefit of the doubt on this score. And even if the Trustees are correct, Ms.
8 El-Moslimany should not be rewarded for implicit or explicit threats that she might not
9 peaceably depart the Property if and when required to do so. The argument is a red herring.
10

11 Finally, the suggestion that “the holder of the first mortgage ... could commence
12 foreclosure proceedings at any time” rings hollow in light of the fact that no foreclosure
13 proceedings have actually begun. This means that the Trustees would have many months – in
14 perhaps the hottest real estate market in history – to market and sell an extraordinarily desirable
15 residential property. There seems little doubt that a sale transaction would close – with payoff
16 to the first position lender – long before foreclosure would become a legitimate concern.
17

18 **C. Complexity of Litigation and Expense, Inconvenience and Delay.**

19 This is the only factor that arguably supports the Trustee’s position, and even it is a
20 close call. For starters, the Trustees start by listing a number of litigation tasks that would be
21 required to take *any* case to trial, such as marshalling evidence and taking depositions. Brown
22 Motion, pg. 6. Other than the existence of information in Saudi Arabia and the possible need
23 for a translator, there is nothing that appears to be remarkably complex, expensive, or
24 inconvenient about the case. This is bolstered by the Trustees’ \$125,000 estimate for additional
25

1 fees to take the case to trial. While certainly not an insignificant amount, it is hardly
2 inordinately expensive. The Trustees also observe that the Debtor might appeal an adverse
3 ruling. *Id.* But so might any debtor. In sum, the fact that it will cost money to obtain a
4 judgment in the Al-Youssef adversary is an unremarkable reality that exists in any lawsuit, and
5 does not weigh strongly in favor of settlement.

6
7 **D. Best Interest of Creditors.**

8 As an initial matter, Dr. Sindi is the most significant creditor of both estates, holding an
9 overwhelming percentage of the value of the creditor claims. As such, the rule that “creditors’
10 objections to a compromise must be afforded due deference ...,” *A&C* at 1382, carries special
11 weight here. Dr. Sindi is effectively *the* creditor.

12 The proposed resolution is respectfully *not* in her best interests, or those of the few
13 other creditors. Indeed, the settlement would have significant deleterious effects on Dr. Sindi,
14 with very little upside. Although the Motions do not state a specific dollar amount that would
15 flow to Dr. Sindi after payment of the Trustee’s costs, fees, and legal expenses, she understands
16 that her net from the \$300,000 payment by Ms. El-Moslimany would be in the range of \$110-
17 \$120,000. The Trustees would then dismiss the existing adversary action, and effectively
18 depart from the scene as it concerns the various issues around the Al-Yousef lien.

19
20 But that would not be the end of things: Dr. Sindi is not a party to the Al-Yousef
21 adversary, and her rights to pursue her own lien avoidance arguments would not (and could
22 not) be prejudiced by the Trustees’ settlement with Ms. El-Moslimany and Ms. Alyousef. *See*
23 *A&C* at 1384 (“the bankruptcy court is obligated to preserve the rights of the creditors”);
24 Brown Motion, pg. 4 (“Trustee Brown does not believe [Dr. Sindi] is prejudiced by the settling
25

1 of an Adversary Proceeding to which she is not a party.” What this really means is that Dr.
2 Sindi would be forced to recreate the work done by Trustee Brown to date in the Al-Yousef
3 adversary, work which he estimates has already cost “approximately \$100,000.” Brown
4 Motion pg. 6; Brown Decl., ¶ 17. The bottom line is that Dr. Sindi’s \$110-\$120,000 would be
5 largely consumed getting to the same point where Trustee Brown is currently. It is a gross
6 understatement to say that this would be a massive waste of resources, one that can be avoided
7 if the current adversary action is brought to its natural end by Trustee Brown.
8

9 The Trustees also fail to address how and why the settlement with Ms. El-Moslimany
10 and Ms. Al-Yousef is preferable to the earlier settlement they reached with Dr. Sindi. In fact,
11 the earlier resolution is objectively better.
12

13 This is largely due to the current red-hot market for residential property in the Seattle
14 area. The Jones Declaration submitted by the trustees indicated a Property value of \$1,300,000
15 (or more) as of April 9, 2021. Wisen Decl., Exh. E, ¶ 5. At this value, the amount likely to
16 come to the estates following a sale – after paying the first-position mortgage, setting aside
17 homestead payments, and reserving \$446,000 attributable to the Al-Yousef lien – was \$78-
18 90,000. See Wisen Decl., Exh. F (Trustee’s Motion to List Property, Pg. 3). This amount
19 would allow the Trustees to make a significant payment toward their incurred expenses –
20 including legal fees – and would also leave open the possibility for a large additional payment
21 from the eventual resolution of the Al-Yousef action. Indeed, using the Trustees 75%
22 “likelihood of success” assumption, the expected value of the Al-Yousef claim is \$240,750.⁴
23
24

25 ⁴ \$446,000 less \$125,000 equals \$321,000. 75% of \$321,000 is \$240,750.

1 Combined with the \$78,000 - \$90,000 expected by the Trustees in the near term from a sale of
2 the Property, the Trustee's own evidence shows that the value of the plan proposed in the
3 Trustee's Motion to List Property is higher than \$300,000.

4 Critically, the value provided by Mr. Jones in early April is also badly outdated.
5 Recognizing their imperfect nature, as of June 9, 2021, the value of the Property was
6 \$1,741,295 according to Zillow (Wisen Decl., Exh. H) or \$1,455,762 according to Redfin
7 (Wisen Decl., Exh. I). This does not appear to be pie-in-the-sky, as the Zillow estimate
8 indicates that the "30 day change" in the value of the Property was a whopping \$231,275.
9 Indeed, there could be well more than \$300,000 in proceeds available from a sale of the
10 Property *even if the Al-Youssef lien eventually has to be paid in full.* A hypothetical example
11 based on Zillow's estimate is as follows:
12

13	Property Value:	\$1,741,295
14	Washington Federal:	-\$410,000
15	Homesteads:	-\$250,000
16	Al-Yousef Holdback	-\$446,000
17	Cost of Sale	-\$174,129
	Net:	\$461,166

18 In sum, if either of these recent estimates are remotely accurate, accepting \$300,000 is
19 simply unjustifiable. Indeed, if Zillow's current figures are taken at their face, the value of a
20 resolution involving a sale of the Property exceeds \$700,000.⁵ At Redfin's lower estimate, the
21 likely recovery is still over \$500,000. Given the white-hot real estate market, the number could
22 even be higher. *At the very least the Property should be exposed to market in order to find*
23 *out.*
24

25 ⁵ \$461,166 net proceeds from the sale, plus the \$240,750 value of the Al-Yousef claim. See fn. 4.

1 In light of the forgoing, the resolution that is in the best interests of the creditors –
2 including Dr. Sindi – is for the Court to deny the instant Motion, and to grant the Trustee’s
3 Motion to List Property.

4 **III. CONCLUSION**

5 Dr. Sindi recognizes the difficulties faced by the Trustees in this case, given the
6 intransigent approach of Ms. El-Moslimany. Her approach is unfortunately no surprise, given
7 her misplaced loathing of Dr. Sindi. But as the predominant creditor, Dr. Sindi asks that her
8 voice be given equal (if not greater) weight than Ms. El-Moslimany, who is plainly determined
9 to try to ensure that Dr. Sindi recover nothing (or as little as possible).
10

11 More importantly, settling with Ms. El-Moslimany is an objectively bad result for the
12 creditors. In contrast, granting the Trustee’s Motion to List Property is likely to generate well
13 more than \$300,000 for the estates, in the short term, and without even taking the Al-Yousef
14 adversary into account.
15

16
17 DATED this 11th day of June, 2021.

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19 Attorneys for Hayat Sindi

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26 HAYAT SINDI’S OBJECTION TO MOTIONS TO APPROVE
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CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2021, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to those attorneys of record registered on the CM/ECF system.

DATED this 11th day of June, 2021

/s/ Anthony S. Wisen

Anthony S. Wisen, WSBA #39656

HAYAT SINDI'S OBJECTION TO MOTIONS TO APPROVE
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